Public Prosecutor v Abdul Azeez bin Abdul Rahim and another case

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO WA-44–232–09 OF 2019 AND CRIMINAL CASE NO WA-44–233–09 OF 2019

MOHD NAZLAN J

10 JANUARY 2020

Criminal Procedure — Jurisdiction of court — Transfer of case — Application to transfer criminal case from sessions court to High Court — Whether application met requirements of law — Whether cases were of public interest involving public figures — Whether complexity of cases justified transfer — Whether transfer of cases prejudicial — Criminal Procedure Code s 417(1)(b) & (e)

These were two separate applications filed by the prosecution pursuant to s 417 of the Criminal Procedure Code ('the CPC') for an order that each of the cases against the two accused persons which were registered at the Kuala Lumpur Sessions Court be transferred to and heard before the High Court of Malaya in Kuala Lumpur. The two applications were as agreed by parties to be heard together because the basis for the transfer was almost identical and also since these cases had been ordered to be jointly tried without objection. The two cases incidentally involve accused persons who were brothers, one allegedly abetting the other. The first respondent at the Kuala Lumpur sessions court was charged with three charges under s 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act') and with nine charges under s 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLATFAPUAA'). The second respondent, who was the elder brother of the first respondent was at the same sessions court preferred with two abetment charges under s 28(1)(cc) of the MACC Act, read together with ss 16(a)(A) and 24(1) of the MACC Act. The sessions court allowed the application of the prosecution for the cases to be jointly tried. The respondents did not object. On 19 September 2019 the prosecution filed these two applications by way of notice of motion against the first and second respondents respectively for the transfer of these cases from the sessions court to the High Court under s 417(1)(e) of the CPC.

Held, dismissing the applications:

(1) The argument by the applicant that the cases ought to be transferred because one of the accused persons was a public figure on account of being an MP and former chairman of the Lembaga Tabung Haji was truly misconceived. A refusal to transfer would not be inconsistent with the

constitutional principle of equality before the law. Applicants for transfers must satisfy s 417(1)(e) of the CPC and not attempt to muddle the issue by quoting considerations which were plainly irrelevant to the issue before the court. Just because the accused was a public figure should not without more justified a transfer in the ends of justice (see paras 25, 28 & 33).

(2) It very difficult to accept that mere facts of the case, however intricate or complex, if indeed any would arise in the course of trial, and notwithstanding the voluminous documents that could be tendered, could not be competently and professionally dealt with by the sessions court judges, considering their legal qualifications and considerable experience. In order to be able to succeed under s 417(1)(b) of the CPC, an applicant must show that the question of law was truly and exceptionally difficult and extraordinary. The sessions court judges were no less competent and was also very experienced to try the case against the applicant, and to deal with other possibly complex issues concerning admissibility of evidence and other issues potentially arising from the MACC Act, AMLATFPUAA, Evidence Act 1950 and even the Federal Constitution. The ground in s 417(1)(e) of the CPC vis a vis the potential complexity of the facts of the cases as relied on by the applicant in its two applications to make a case for the transfer of the prosecution against the two respondents to the High Court could not be sustained (see paras 46, 50, 53 & 55).

(3) The court failed to see how the fact that the trial would be conducted at the sessions court would cause any prejudice to the applicant or the respondents, or that the public interest would in any way be undermined. Criminal cases must commence where they were registered under the law in adherence to the remit of the criminal jurisdiction of the sessions court. A related and crucial aspect to the expression 'expedient for the ends of justice' found in s 417(1)(e) of the CPC was the fundamental necessity of ensuring the integrity of the administration of criminal justice was always upheld. In the context of transfer of cases, an important facet was the promotion of judicial efficiency. The reliance on the ground that the transfer would be expedient in the ends of justice too was difficult to sustain because it was not expedient in the ends of justice if a transfer did not promote judicial efficiency and causes delay in the commencement of trials. It was essential that public confidence in the integrity of the criminal justice system be maintained at all times (see paras 60, 62, 65 & 73).

(4) Just because the two cases would be jointly tried, it did not follow that they should therefore be transferred to the High Court. Joint trials were the norm at trial courts at all levels. The argument was wholly unmeritorious (see paras 74–75).

(5) Even though the parties might had agreed, this did not in any way bind the court which was free to decide otherwise should a proper exercise of its judicial discretion resulted in a contrary determination. The fact that the respondents had no objection to the transfer application did not relieve the applicant of its duty to satisfy the court that the requirements stipulated under s 417(1)(e) of the CPC had been met (see paras 76–77).

[Bahasa Malaysia summary

Ini adalah dua permohonan berasingan yang difailkan oleh pihak pendakwaan berdasarkan s 417 Kanun Tatacara Jenayah ('KTJ') untuk perintah agar setiap kes terhadap kedua-dua tertuduh yang didaftarkan di Mahkamah Sesyen Kuala Lumpur dipindahkan ke dan didengar di Mahkamah Tinggi Malaya di Kuala Lumpur. Kedua-dua permohonan itu dipersetujui oleh pihak-pihak untuk didengar bersama kerana dasar pemindahan tersebut hampir sama dan juga kerana kes-kes ini telah diperintahkan untuk dibicarakan bersama tanpa bantahan. Kedua-dua kes itu secara tidak sengaja melibatkan tertuduh yang bersaudara, satu di antaranya dituduh bersubahat dengan yang lain. Responden pertama di mahkamah sesyen Kuala Lumpur didakwa dengan tiga pertuduhan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 ('Akta SPRM') dan dengan sembilan tuduhan di bawah s 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 ('AMLATFAPUAA'). Responden kedua, yang merupakan abang responden pertama berada di mahkamah sesyen yang sama dengan dua tuduhan bersubahat di bawah s 28(1)(cc) Akta SPRM, dibaca bersama dengan s 16(a)(A) dan s 24(1) Akta SPRM. Mahkamah sesyen membenarkan permohonan pihak pendakwaan untuk kes-kes tersebut dibicarakan bersama. Responden tidak membantah. Pada 19 September 2019, pihak pendakwaan memfailkan kedua-dua permohonan ini melalui notis usul terhadap responden pertama dan kedua untuk pemindahan kes-kes ini dari mahkamah sesyen ke Mahkamah Tinggi di bawah s 417(1)(e) KTJ.

Diputuskan, menolak permohonan:

(1) Hujahan oleh pemohon bahawa kes-kes tersebut harus dipindahkan kerana salah seorang tertuduh adalah tokoh masyarakat kerana merupakan seorang Ahli Parlimen dan bekas ketua Lembaga Tabung Haji adalah benar-benar salah. Penolakan untuk pemindahan tidak akan bertentangan dengan prinsip perlembagaan kesamarataan dari segi undang-undang. Pemohon untuk pemindahan mesti memenuhi s 417(1)(e) KTJ dan tidak mencuba untuk mencampuradukkan isu dengan memetik pertimbangan yang jelas tidak relevan dengan masalah di hadapan mahkamah. Hanya kerana tertuduh adalah tokoh masyarakat tidak semestinya lebih dibenarkan untuk melakukan pemindahan (lihat perenggan 25, 28 & 33).

(2) Sangat sukar untuk menerima bahawa fakta kes semata-mata, walau rumit atau kompleks, jika memang ada yang timbul dalam proses perbicaraan, dan walaupun terdapat banyak dokumen yang akan ditender, tidak dapat ditangani secara kompeten dan profesional oleh hakim mahkamah sesyen, mempertimbangkan kelayakan undang-undang dan pengalaman mereka yang cukup besar. Untuk berjaya di bawah s 417(1)(b) KTJ, pemohon harus menunjukkan bahawa persoalan undang-undang benar-benar sukar dan luar biasa. Hakim mahkamah sesyen tidak kurang kompeten dan juga sangat berpengalaman untuk mengadili kes tersebut terhadap pemohon, dan untuk menangani masalah-masalah lain yang mungkin kompleks mengenai penerimaan bukti dan isu-isu lain yang berpotensi timbul dari Akta SPRM, AMLATFPUAA, Akta Keterangan 1950 dan bahkan Perlembagaan Persekutuan. Alasan dalam s 417(1)(e) KTJ terhadap potensi kerumitan fakta kes seperti yang disandarkan oleh pemohon dalam dua permohonannya untuk membuat kes untuk pemindahan pihak pendakwaan terhadap dua responden ke Mahkamah Tinggi tidak dapat dikekalkan (lihat perenggan 46, 50, 53 & 55).

(3) Mahkamah gagal melihat bagaimana fakta bahawa perbicaraan akan dilakukan di mahkamah sesyen akan menimbulkan prejudis terhadap pemohon atau responden, atau kepentingan umum dengan cara apa pun akan terganggu. Kes-kes jenayah harus dimulakan di mana mereka didaftarkan di bawah undang-undang untuk mematuhi bidang kuasa jenayah mahkamah sesyen. Aspek yang berkaitan dan penting dengan ungkapan 'expedient for the ends of justice' yang terdapat dalam s 417(1)(e) KTJ adalah keperluan asas untuk memastikan integriti pentadbiran keadilan jenayah selalu ditegakkan. Dalam konteks pemindahan kes, aspek penting adalah peningkatan kecekapan kehakiman. Ketergantungan dengan alasan bahawa pemindahan itu akan bermanfaat di mata keadilan juga sukar dipertahankan kerana tidak bermanfaat di mata keadilan jika pemindahan tidak mendorong kecekapan kehakiman dan menyebabkan penundaan dalam proses pengadilan. Adalah mustahak agar keyakinan masyarakat terhadap integriti sistem keadilan jenayah dijaga setiap masa (lihat perenggan 60, 62, 65 & 73).

(4) Hanya kerana kedua-dua kes itu akan dibicarakan bersama, maka tidak seharusnya kedua-duanya dipindahkan ke Mahkamah Tinggi. Perbicaraan bersama adalah kebiasaan di mahkamah bicara di semua peringkat. Hujahan itu sama sekali tidak bermerit (lihat perenggan 74–75).

(5) Walaupun pihak mungkin telah bersetuju, ini sama sekali tidak mengikat mahkamah yang bebas untuk memutuskan sebaliknya jika pelaksanaan budi bicara kehakiman yang tepat menghasilkan penentuan yang

bertentangan. Fakta bahawa responden tidak membantah dengan permohonan pemindahan tidak membebaskan pemohon dari kewajibannya untuk memuaskan mahkamah bahawa syarat-syarat yang ditetapkan di bawah s 417(1)(e) KTJ telah dipenuhi (lihat perenggan 76–77).]

Cases referred to

Attorney-General v Koh Cho Puan & Ors [1986] 2 MLJ 339 (refd)
Dato' Sri Mohd Najib bin Hj Abdul Razak v PP [2019] 5 MLJ 44; [2019] 8 CLJ 293, FC (refd)
Lin v PP [1987] 1 MLJ 106 (refd)
Measor & Anor v PP [1972] 1 MLJ 195 (refd)
Oh Keng Seng v PP [1974] 2 MLJ 48 (distd)
PP v Dato Kee Yong Wee & Ors [1988] 2 MLJ 198 (refd)
PP v Datuk Haji Harun bin Haji Idris (No 2) [1977] 1 MLJ 15 (refd)
PP v Datuk Harun bin Haji Idris & Ors [1976] 2 MLJ 116 (refd)
PP v Dato' Sri Mohd Najib bin Hj Abd Razak [2019] 4 MLJ 421; [2019] 6 CLJ 561, FC (refd)
Seow Francis v Comptroller of Income Tax [1990] 3 MLJ 410, HC (refd)
Wong Hong Toy & Anor v PP [1986] 2 MLJ 336 (refd)

Legislation referred to

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ss 4(1), (1)(b), 71
Criminal Procedure Code ss 51A, 170, 417, 417(1), (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), (2), 418A
Criminal Procedure Code [SG] s 184(1)
Evidence Act 1950
Federal Constitution art 8
Malaysian Anti-Corruption Commission Act 2009 16, 16(a)(A), 24(1), 28(1)(cc), 41A, 59

Baizura bt Kamal (Nik Haslinie bt Hashim, Adam Mohamed, Aimi Syazwani bt Sarmin and Hafizatul Ifa bt Abdul Razak with her) (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Hisyam Teh Poh Teik (MM Athimulan, Mohamed Fudhail Zulaini, Marina Mohamed, Arwindar Gill and Mohd Rifahmi bin Abdul Musikin with him) (Athimulan & Co) for the respondent.

Mohd Nazlan J:

INTRODUCTION

[1] These are two separate applications filed by the prosecution pursuant to s 417 of the Criminal Procedure Code ('the CPC') for an order that each of the

cases against the two accused persons which were registered at the Kuala Lumpur Sessions Court as Arrest Case Nos WA-44–232–09 of 2019 and WA-44–233–09 of 2019 respectively be transferred to and heard before the High Court of Malaya in Kuala Lumpur.

[2] The two applications were as agreed by parties to be heard together because the basis for the transfer is almost identical and also since these cases had been ordered to be jointly tried without objection. The two cases incidentally involve accused persons who are brothers, one allegedly abetting the other.

[3] At the conclusion of the hearing, and despite the accused persons as the respondents herein having no objection to these applications, I dismissed both applications, and highlighted the primary reasons for the same. This judgment contains the full reasons for my decision.

KEY BACKGROUND FACTS

[4] On 16 January 2019, the first respondent was at the Kuala Lumpur Sessions Court charged with three charges under s 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act') involving a total amount of RM5.2m and with nine charges under s 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLATFAPUAA'), which concerned the receipt of about RM139.4m.

[5] The charges against the first respondent (the first three under the MACC Act, the nine others under the AMLATFAPUAA) read as follows:

> Pertuduhan Pertama
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> Bahawa kamu, pada 8 Disember 2010, di CIMB Bank Cawangan Menara UAB, No. 6, Jalan Tun Perak, City Centre, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima bagi diri kamu suatu suapan, iaitu, wang tunai sejumlah RM1,200,000.00 melalui akaun CIMB Bank Berhad nombor akaun 14140037378050 milik kamu daripada Mohammad Redzuan Mohanan bin Abdullah yang merupakan Pengarah Syarikat Menuju Asas Sdn Bhd, sebagai upah bagi diri kamu kerana telah melakukan suatu perkara yang sebenar, iaitu, membantu Syarikat Menuju Asas Sdn Bhd mendapatkan projek-projek (seperti di Lampiran A) daripada Kerajaan Malaysia secara rundingan terus dan tender terhad yang keseluruhannya bernilai RM197,805,750.18, dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia (Akta 694) yang boleh dihukum di bawah Seksyen 24(1) Akta yang sama.
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> Pertuduhan Kedua

Bahawa kamu, pada 13 Jun 2017, di Affin Bank Berhad, J-03-G, Blok J, Setiawalk, Persiaran Wawasan, Pusat Bandar Puchong, di dalam daerah Petaling, di dalam Negeri Selangor Darul Ehsan, telah secara rasuah menerima bagi diri kamu suatu suapan, iaitu, wang tunai sejumlah RM2,000,000.00 daripada Mohammad Redzuan Mohanan bin Abdullah yang merupakan Pengarah Syarikat Menuju Asas Sdn Bhd, sebagai upah bagi diri kamu kerana telah melakukan suatu perkara yang sebenar, iaitu, membantu Syarikat Menuju Asas Sdn Bhd mendapatkan Projek Membina Lebuhraya Persisiran Pantai Baru: Kerja-Kerja Menaiktaraf Jalan Persekutuan FT005 (Teluk Intan ke Kampung Lekir, Perak Darul Ridzuan) secara tender terhad daripada Kementerian Kerja Raya Malaysia yang bernilai RM644,480,000.00 dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah Seksyen 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (Akta 694) yang boleh dihukum di bawah Seksyen 24(1) Akta yang sama.

Pertuduhan Ketiga

Bahawa kamu, pada 10 April 2018, di Affin Bank Berhad, J-03-G, Blok J, Setiawalk, Persiaran Wawasan, Pusat Bandar Puchong, di dalam daerah Petaling, di dalam Negeri Selangor Darul Ehsan, telah secara rasuah menerima bagi diri kamu suatu suapan, iaitu, wang tunai sejumlah RM2,000,000.00 daripada Mohammad Redzuan Mohanan bin Abdullah yang merupakan Pengarah Syarikat Menuju Asas Sdn Bhd, sebagai upah bagi diri kamu kerana telah melakukan suatu perkara yang sebenar, iaitu, membantu Syarikat Menuju Asas Sdn Bhd mendapatkan Projek Membina Lebuhraya Persisiran Pantai Baru: Kerja-Kerja Menaiktaraf Jalan Persekutuan FT005 (Teluk Intan ke Kampung Lekir, Perak Darul Ridzuan) secara tender terhad daripada Kementerian Kerja Raya Malaysia yang bernilai RM644,480,000.00 dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah Seksyen 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (Akta 694) yang boleh dihukum di bawah Seksyen 24(1) Akta yang sama.

Pertuduhan Pertama

Bahawa kamu, di antara 8 Mac 2010 dan 31 Disember 2010, di sekitar Lembah Klang, telah melakukan kesalahan pengubahan wang haram, iaitu, kamu telah menerima hasil daripada aktiviti haram berjumlah RM1,910,000.00 daripada Syarikat Menuju Asas Sdn Bhd, oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 (Akta 613) yang boleh dihukum di bawah Seksyen 4(1) Akta yang sama.

Pertuduhan Kedua

Bahawa kamu, di antara 1 Februari 2011 dan 29 Disember 2011, di sekitar Lembah Klang, telah melakukan kesalahan pengubahan wang haram, iaitu, kamu telah menerima hasil daripada aktiviti haram berjumlah RM670,000.00 daripada Syarikat Menuju Asas Sdn Bhd, oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 (Akta 613) yang boleh dihukum di bawah Seksyen 4(1) Akta yang sama.

Pertuduhan Ketiga

Bahawa kamu, di antara 6 Januari 2012 dan 26 Disember 2012, di sekitar Lembah Klang, telah melakukan kesalahan pengubahan wang haram, iaitu, kamu telah menerima hasil daripada aktiviti haram berjumlah RM4,131,104.60 daripada Syarikat Menuju Asas Sdn Bhd, oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 (Akta 613) yang boleh dihukum di bawah Seksyen 4(1) Akta yang sama.

Pertuduhan Keempat

Bahawa kamu, di antara 5 Januari 2013 dan 25 Disember 2013, di sekitar Lembah Klang, telah melakukan kesalahan pengubahan wang haram, iaitu, kamu telah menerima hasil daripada aktiviti haram berjumlah RM783,900.00 daripada Syarikat Menuju Asas Sdn Bhd, oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 (Akta 613) yang boleh dihukum di bawah Seksyen 4(1) Akta yang sama.

Pertuduhan Kelima

Bahawa kamu, di antara 3 Januari 2014 dan 31 Disember 2014, di sekitar Lembah Klang, telah melakukan kesalahan pengubahan wang haram, iaitu, kamu telah menerima hasil daripada aktiviti haram berjumlah RM1,483,900.00 daripada Syarikat Menuju Asas Sdn Bhd, oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 (Akta 613) yang boleh dihukum di bawah Seksyen 4(1) Akta yang sama.

Pertuduhan Keenam

Bahawa kamu, di antara 8 Januari 2015 dan 31 Disember 2015, di sekitar Lembah Klang, telah melakukan kesalahan pengubahan wang haram, iaitu, kamu telah menerima hasil daripada aktiviti haram berjumlah RM8,183,900.00 daripada Syarikat-Syarikat seperti di Lampiran 1, oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 (Akta 613) yang boleh dihukum di bawah Seksyen 4(1) Akta yang sama.

Pertuduhan Ketujuh

Bahawa kamu, di antara 4 Januari 2016 dan 30 Disember 2016, di sekitar Lembah Klang, telah melakukan kesalahan pengubahan wang haram, iaitu, kamu telah menerima hasil daripada aktiviti haram berjumlah RM33,363,885.25 daripada Syarikat-Syarikat seperti di Lampiran 2, oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 (Akta 613) yang boleh dihukum di bawah Seksyen 4(1) Akta yang sama.

Pertuduhan Kelapan

Bahawa kamu, di antara 3 Januari 2017 dan 27 Disember 2017, di sekitar Lembah Klang, telah melakukan kesalahan pengubahan wang haram, iaitu, kamu telah

menerima hasil daripada aktiviti haram berjumlah RM63,639,975.00 daripada Syarikat-Syarikat seperti di Lampiran 3, oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 (Akta 613) yang boleh dihukum di bawah Seksyen 4(1) Akta yang sama.

Pertuduhan Kesembilan

Bahawa kamu, di antara 9 Januari 2018 dan 30 Ogos 2018, di sekitar Lembah Klang, telah melakukan kesalahan pengubahan wang haram, iaitu, kamu telah menerima hasil daripada aktiviti haram berjumlah RM25,250,000.00 daripada Syarikat-Syarikat seperti di Lampiran 4, oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 (Akta 613) yang boleh dihukum di bawah Seksyen 4(1) Akta yang sama.

[6] On the same day, the second respondent, who is the elder brother of the first respondent was at the same sessions court preferred with two abetment charges under s 28(1)(cc) of the MACC Act, read together with ss 16(a)(A) and 24(1) of the same Act, involving the amount of RM4m.

[7] The charges against the second respondent read as follows:

Pertuduhan Pertama

Bahawa kamu, pada 13 Jun 2017, di Affin Bank Berhad, J-03-G, Blok J, Setiawalk, Persiaran Wawasan, Pusat Bandar Puchong, di dalam daerah Petaling, di dalam Negeri Selangor Darul Ehsan, telah bersubahat dalam perlakuan kesalahan oleh Abdul Azeez bin Abdul Rahim (No. K/P: 661119-10-5503), yang telah secara rasuah menerima bagi dirinya suatu suapan, iaitu, wang tunai sejumlah RM2,000,000.00 daripada Mohammad Redzuan Mohanan bin Abdullah yang merupakan Pengarah Syarikat Menuju Asas Sdn Bhd, sebagai upah bagi diri kamu kerana telah melakukan suatu perkara yang sebenar, iaitu, membantu Syarikat Menuju Asas Sdn Bhd mendapatkan Projek Membina Lebuhraya Persisiran Pantai Baru: Kerja-Kerja Menaiktaraf Jalan Persekutuan FT005 (Teluk Intan ke Kampung Lekir, Perak Darul Ridzuan) secara tender terhad daripada Kementerian Kerja Raya Malaysia yang bernilai RM644,480,000.00 dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah Seksyen 28(1)(c) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (Akta 694) yang boleh dihukum di bawah Seksyen 16(a)(A) Akta yang sama.

Pertuduhan Kedua

Bahawa kamu, pada 10 April 2018, di Affin Bank Berhad, J-03-G, Blok J, Setiawalk, Persiaran Wawasan, Pusat Bandar Puchong, di dalam daerah Petaling, di dalam Negeri Selangor Darul Ehsan, telah bersubahat dalam perlakuan kesalahan oleh Abdul Azeez bin Abdul Rahim (No. K/P: 661119-10-5503), yang telah secara rasuah menerima bagi dirinya suatu suapan, iaitu, wang tunai sejumlah RM2,000,000.00 daripada Mohammad Redzuan Mohanan bin Abdullah yang

merupakan Pengarah Syarikat Menuju Asas Sdn Bhd, sebagai upah bagi diri kamu kerana telah melakukan suatu perkara yang sebenar, iaitu, membantu Syarikat Menuju Asas Sdn Bhd mendapatkan Projek Membina Lebuhraya Persisiran Pantai Baru: Kerja-Kerja Menaiktaraf Jalan Persekutuan FT005 (Teluk Intan ke Kampung Lekir, Perak Darul Ridzuan) secara tender terhad daripada Kementerian Kerja Raya Malaysia yang bernilai RM644,480,000.00 dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah Seksyen 28(1)(c) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (Akta 694) yang boleh dihukum di bawah Seksyen 16(a)(A) Akta yang sama.

[8] On the same day, the sessions court allowed the application of the prosecution for the cases to be jointly tried. The respondents, as stated earlier, did not object.

[9] The sessions court on 7 August 2019 fixed trial to commence on 25 September 2019 and to continue on 11 October 2019 and a number of later dates.

[10] On 19 September 2019 the prosecution filed these two applications by way of notice of motion against the first and second respondents respectively for the transfer of these cases from the sessions court to the High Court under s 417(1)(e) of the Criminal Procedure Code ('the CPC'). Given the applications, on the date fixed for trial on 25 September 2019 the sessions court gave another date for case management pending the decision on the transfer applications.

[11] Hence the instant application before me.

THE PRESENT APPLICATION

[12] The applicant advances a number of reasons to support its transfer applications, and group the same under the ground in s 417(1)(e) of the CPC that the transfers are expedient for the ends of justice. In essence, the applicant formulates the following reasons in support of the applications.

[13] First, it is said that considering the identity of the first respondent, it is apparent that this is a public interest case. He is a public figure — an UMNO politician, an elected Member of Parliament, and a former Chairman of Lembaga Tabung Haji, among others. This is one of the kleptocracy cases brought to court by the public prosecutor. Like previous cases involving high profile politicians, such as two former Menteri Besar of Selangor, the present cases should also be tried at the High Court.

[14] Secondly, according to the applicant, these cases involve 12 charges against the first respondent alone, concerning 12 government projects, a number of directors from numerous companies and thus voluminous documents to be produced in court. The tender award process set by the government will have to be examined, and high profile figures may have to be called as witnesses. All these complicated and complex facts render it more suitable for the trial be heard at the High Court.

[15] Thirdly, it is submitted that the complexity of the criminal charges would make it expedient that the case be heard at the High Court in order to ensure a fair and speedy trial process.

[16] Fourthly, the transfer of the cases to start at the High Court would not be prejudicial to either the applicant or the respondents as all would be accorded with the right to appeal all the way to the Federal Court. Furthermore, a number of other criminal proceedings categorised under the kleptocracy criminal cases have been transferred to the High Court under s 417(1)(e) of the CPC.

[17] Fifthly, the applicant argues that since the second respondent was charged with abetting the first respondent in respect of the second and third predicate charges against the first respondent which disclose that the time, date, place and amount of gratification is similar to one another, thus justifying the invocation under s 170 of the CPC, resulting in the order for joint trial, it is appropriate that the cases be tried at the High Court.

[18] Sixthly, the applicant argues that the applications ought to be allowed as the same are not contested by the respondents.

[19] The accused persons, as the respondents herein, did not object to and in fact supported these applications.

EVALUATION AND FINDINGS

[20] These applications were instituted by the prosecution. They were supported by the respondents. It should be stated at the outset that that however does not mean that this court must allow the applications. The test is not whether the parties in dispute consent to the applications but whether they meet the requirements of the law. Otherwise there is a failure on the part of this court to properly discharge its duty in the exercise of judicial discretion. The law in this context is contained as referred to by the applicant in s 417(1)(e) of the CPC.

[21] It is apposite that reference be made to s 417, the entirety of which reads

as follows:

417 High Court's power to transfer cases

(1) Whenever it is made to appear to the High Court —

(a) that a fair and impartial trial cannot be had in any criminal Court subordinate to it;

(b) that some question of law of unusual difficulty is likely to arise;

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the same;

(d) that an order under this section will tend to the general convenience of the parties or witnesses; or

(e) that such an order is expedient for the ends of justice, or is required by any provision of this Code,

it may order —

(aa) that any offence be tried by any Court not empowered under sections 121 to 126 but in other respects competent to try such offence;

(bb) that any particular case or class of cases be transferred from a criminal Court subordinate to it to any other such criminal Court of equal or superior jurisdiction; or

(cc) that any particular criminal case be transferred to and tried before the High Court.

(2) The High Court may make an order under subsection (1) either on the report of the lower Court, or on the application of the Public Prosecutor or the accused person, or on its own initiative.

(3)(a) When an order is made under paragraph (1)(cc) the lower Court before which the trial of the offence against the accused person is pending shall cause the accused person to appear or be brought before the High Court on the date specified in the said order or as soon as may be practicable if no such date is specified.

(b) When the accused person appears or is brought before the High Court in accordance with paragraph (a), it shall fix a date for his trial which shall be held in accordance with the procedure under Chapter XX.

(4) The Court to which a case is transferred under this section may act on the evidence already recorded in a trial or partly so recorded and partly recorded by itself, or it may re-summon the witnesses and re-commence the trial:

Provided that in any case so transferred the Public Prosecutor or the accused person may, when the Court to which the case is transferred commences its proceedings, apply that the witnesses or any of them be re-summoned and re-heard.

[22] It is clear that the discretionary power to transfer cases under s 417 of the CPC is vested in the High Court. The discretionary power must be exercised judiciously. In *Public Prosecutor v Datuk Harun bin Haji Idris & Ors* [1976] 2 MLJ 116, the High Court in the context of discussing ss 417 and

418A of the CPC stated in no uncertain terms that under s 417 of the CPC the ultimate decision as to whether any particular criminal case should be transferred from a subordinate court to the High Court does not depend merely on the arbitrary selection or whim of the public prosecutor but is determined ultimately on the proper exercise of judicial discretion by the High Court. I should add, nor can the exercise of that power be dependent on whether the parties in litigation consented to the application, without more.

[23] It was recently reiterated by the Federal Court in *Dato' Sri Mohd Najib bin Hj Abdul Razak v Public Prosecutor* [2019] 5 MLJ 44; [2019] 8 CLJ 293 that the correctness of a court's exercise of discretion under s 417(2) of the CPC is dependent on the manner the discretion is exercised, specifically whether all the relevant considerations have been weighed, and for this purpose the judge must direct his mind to matters stipulated under ss 417(1)(a)–(e).

Public figure and public interest

[24] The only ground relied on by these applications is s 417(1)(e) of the CPC which is that the transfers are expedient for the ends of justice. The crux of the argument of the applicant is that the cases are of public interest especially since they involve public figures like the first respondent.

[25] To the extent that the applicant is suggesting that the cases ought to be transferred because one of the accused persons is a public figure on account of being an MP and former chairman of the Lembaga Tabung Haji, in my view, the argument is truly misconceived. Further, it surely cannot be contended that the slew of prosecution in the aftermath of the 14th General Election against well-known personalities must mean that they all should be tried in the High court despite none of the cases were registered in the original jurisdiction of the High Court. No two cases are the same.

[26] It is not denied that the notion 'expedient in the ends of justice' in s 417(1)(e) of the CPC involves the element of public interest. But it is not in the public interest that all these cases must be transferred up to the High Court, and if for nothing else, causing unnecessary bottleneck and delays in the criminal justice system. For instance, just because the cases against a former PM — the leader of the nation — his spouse and the former Deputy Prime Minister, had all been transferred to the High Court cannot be equated to charges against one of the accused herein who is only in comparison, with respect, a mere MP.

[27] In the context of expediency in the ends of justice, I reiterate that public interest considerations would certainly justify a criminal trial against an accused for acts allegedly committed when he was the leader of the nation be

tried in the High Court. After all, the PM is the highest executive position in the country. This surely cannot mean that the criminal charges against the respondents herein merit a transfer to the High Court as well. These cases are still different. The applicant does not even suggest that the background facts of the cases against the respondents and those in any of the cases that have already been transferred to the High Court reveal a single or same transaction to justify a joint trial under s 170 of the CPC.

[28] In addition, I should add that a refusal to transfer would not be inconsistent with the constitutional principle of equality before the law. It is not the law in the first place that an accused who is a public figure would get his case tried at the High Court. It is in all cases the question of whether an applicant who wishes to have a transfer can fulfil the requirements of the law as stipulated in s 417(1) of the CPC. Nothing more and nothing less.

[29] The applicant argues that in other cases, beginning the charge against a former *Menteri Besar* of a state in *Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15, it has been the practice of the High Court to try cases involving member of the administration in the High Court. But the respondents — or more precisely only one of the two — is an MP. It is not that a public figure like the first respondent would never succeed in any transfer application, but that the judicial discretion would examine other factors relevant to public interest considerations as well. I have alluded to, as one consideration, the need to ensure that not all of the many high profile cases be transferred to the High Court so as not to make the trials unnecessarily delayed. Thus only those considered as attracting greater public interest considerations — for example those who previously held position of greater accountability to the public should probably deserved to be tried at the High Court.

[30] In any event the essence of the requirement on expedience for the ends of justice is public interest. On this I should make reference to a Singapore decision in *Seow Francis v Comptroller of Income Tax* [1990] 3 MLJ 410 which held:

> (2) On the applicant's contention that the matters should be heard in the High Court, bearing in mind that due to the grave consequences to him as a politician and professional, public interest was involved, the court was of the view that the real question was whether this court could fairly and legitimately treat politicians who were charged differently from accused persons who were not politicians. All accused persons should be treated equally regardless of status.

[31] This follows an earlier decision of the Court of Appeal in *Wong Hong Toy & Anor v Public Prosecutor* [1986] 2 MLJ 336 where it was expressed in clear terms as follows:

A It is beyond question that all accused persons must be treated equally regardless of status. We cannot accept the proposition that accused persons who are political personalities should be treated differently if they apply to transfer their trials to the High Court. Like every other accused person, they have to satisfy the High Court and bring themselves within sub-s 184 (1) of the Criminal Procedure Code. In this B case, the appellants had failed to persuade the High Court to exercise its discretion.

[32] The position in Malaysia on the application of the identically drafted s 417(1) to the Singapore version in s 184(1) of the Criminal Procedure Code is no less manifest. All accused persons must be treated equally. For this further C promotes the application of art 8 of the Federal Constitution on equality before the law.

[33] The point is that applicants for transfers must satisfy s 417(1)(e) of the CPC and not attempt to muddle the issue by quoting considerations which are D plainly irrelevant to the issue before the court. Lest it be misapprehended, I further clarify that in evaluating the fulfilment of the element of expediency in the ends of justice, the court would examine the background of the case, the nature of the charges and the identity of the accused given the charges available E before the court and any affidavit filed in respect of the transfer applications. Just because the accused is a public figure should not in my view without more justifies a transfer in the ends of justice.

[34] Otherwise all public figures would benefit from a trial at the High F Court when a very large majority of others have to settle for trials at the sessions courts which are seized of the original jurisdiction to try these criminal cases in the first place. The former PM was a central figure in the 1MDB related charges, which have generated considerable public interest locally as well as internationally. The same cannot be said of the accused person herein who is an G MP, much less the other accused.

Complexity of the cases

H **[35]** The second reason raised by the applicant has some relevance to the ground specified under s 417(1)(b) of the CPC. Which is where a transfer from the sessions court to the High Court may be justified where the case involves questions of law of unusual difficulty. But I emphasise that the applicant refers to no potential questions of law of unusual difficulty but merely claims that the I cases against the respondents involves complex and complicated *facts* that should be dealt with by the High Court instead.

[36] Do complexity and complicated or even unusual facts of the cases justify a transfer? The simple answer is a clear No. It is not even an argument

about complicated and difficult questions of law but on complex facts instead. And not unexpectedly, the applicant refers to a High Court decision which explained the meaning of 'unusual' found in s 417(1)(b) in *Oh Keng Seng v Public Prosecutor* [1974] 2 MLJ 48 in the judgment of Hashim Yeop A Sani J in the following terms:

> More specifically, the decision on this application may be made after considering paragraph (b) of section 417 of the Criminal Procedure Code that is, if it appears to the court that some question of law of unusual difficulty is likely to arise the court may order that the case be transferred to and tried before itself. The use of the word 'unusual' in that paragraph would seem to me to indicate that the difficulty in relation to the law involved must be such that either the question of law is one which is unique or out of the usual or ordinary or one which has not been dealt with by any court before.

[37] As mentioned, that case concerned the assertion about questions of law of unusual difficulty. In the cases before me the applicant says that the facts are complicated and complex. The case of *Oh Keng Seng v Public Prosecutor* is therefore manifestly inapplicable.

[38] I should add that in my view however, the word 'unusual' in this context is meant to describe vis a vis the extent of the difficulty of the question in issue. It is not intended to mean that it is unusual purely because a question has not been dealt with by any court before. Section 417(1)(b) I reiterate speaks of questions of law of unusual difficulty. Not so much novelty in the legal issues. And it goes without saying that any novelty in any point of law does not necessarily make such question of law to be of unusual difficulty. But again, in the cases before me, the applicant is not even asserting there are potentially questions of law, let alone one of unusual difficulty.

[39] Although the parties before me did not offer much in terms of case-law authorities to support the transfer, probably thinking it was unnecessary since the applications were uncontested, I should for purposes of providing clarity to the application of the law on this subject deal with the key points of relevance vis a vis s 417(1)(b) of the CPC, which is the subject of a number of transfer applications of late. Much however, of the legal literature on this subject relies on a number of Singapore decisions which did not find favour in authorising the transfers of cases from the subordinate courts to the High Court on the premise of the ground of the involvement of questions of law of unusual difficulty as identically contained in the drafting of s 417(1)(b) of the CPC.

[40] In *Attorney-General v Koh Cho Puan & Ors* [1986] 2 MLJ 339 the High Court held that issues concerning the mere fact that the case involved some shipping and banking practices did not render them beyond the competence of the courts already entrusted with the responsibility of hearing such trials so as

to justify its transfer to the High Court.

[41] In another decision of the Singapore High Court in *Seow Francis v Comptroller of Income Tax* [1990] 3 MLJ 410 where the appellant was charged with evasion of income tax, the application by the appellant for an order that the summonses be transferred from the subordinate court to the High Court on the ground, inter alia, that there were questions of law of unusual difficulty to be tried, failed. The High Court ruled that the only key issues before the court were whether the appellant had omitted to declare certain earned income and whether the omission was deliberate. District judges were held to be perfectly competent to try the type of cases like that encountered by the appellant.

[42] In yet another of such case across the causeway in the decision of *Lin v Public Prosecutor* [1987] 1 MLJ 106, the High Court expressed the following practical observation:

> Under paragraph (b), the only issue on which the application was urged before me is that the case involves the law on letters of hypothecation and the law of banking and securities. The points of law involved in 'hypothecation' transactions were described as novel; in fact, they may well be. Novelty in a point of law however does not by itself make that point 'a question of law of unusual difficulty.' If the material law governing the transaction, on banking and on securities, is relevant to the cheating charges, it is the task of the prosecution and of defence counsel to place fully and comprehensively with appropriate citation from authorities, the law before the court hearing the case. In my view, therefore, the ground under paragraph (b) fails.

[43] That is not all. The court in *Lin v Public Prosecutor* also stated the following in clear terms:

> ... section 184 (1) (b) to be successfully invoked today the case must be an extraordinarily rare one and I find it extremely difficult to think of one.

[44] Relevantly, *Lin v Public Prosecutor* was followed by the High Court in Malaysia in the case of *Public Prosecutor v Dato Kee Yong Wee & Ors* [1988] 2 MLJ 198 which in my view rendered the status on the true applicability of s 417(1)(b) of the CPC for all intents and purposes settled. The following passages from the judgment of KC Vohrah J merit reproduction:

> Section 417(1)(b) of our law corresponds with section 184(1)(b) of the Singapore Criminal Procedure Code. There have been several applications in Singapore under section 184(1)(b) for transfer of cases from the Subordinate Courts to the High Court. The reported decisions show that invariably these applications have been dismissed. P Coomaraswamy J in *Lin v Public Prosecutor* [1987] 1 MLJ 106 has discussed these and certain relevant Indian decisions (in respect of somewhat similar Indian provisions) in a historical perspective. Let it be noted that the provisions in

India and in the Straits Settlements for transfer of cases on ground of some question of law of unusual difficulty arising were to cater for the past era where judicial officers who were supposed to hear certain difficult cases were either not legally qualified or were inexperienced to deal with them and could hardly have been expected to deal with intricate points of law. P Coomaraswamy J said at p 109:

> In the light of the decisions I have referred to, for the provisions of section 184(1)(b) to be successfully invoked today the case must be an extraordinarily rare one and I find it extremely difficult to think of one. For the historical reasons I have stated, and, given the qualifications and experience of district judges and the more senior magistrates, I am of the firm view that for all practical purposes and intent, paragraph (b) of section 184(1) has fallen into desuetude and obsolescence for transfer of cases to the High Court.

At this hearing, there was no attempt to show what the questions of law of unusual difficulty will be. I personally cannot see any. Surely it cannot be argued that our Sessions Court judges will not be able to see what the constituent ingredients of criminal breach of trust under section 409 or of abetment under section 109 of the Penal Code are. To so argue is not to give credit to the legal qualifications, the considerable experience and professional competence that these judicial officers possess. If indeed there should really be questions of law of unusual difficulty, then the prosecution and the defence are enjoined to do what they normally do in any case in any court, to clearly define and argue the issues fully and exhaustively before the court. But as I have said earlier I personally cannot see any question of law of unusual difficulty arising in the cases which are the subject matter of these applications. Rare indeed, as P Coomaraswamy J has observed in the case of *Lin* [1987] 1 MLJ 106, can such an application based on the ground be invoked today. And like him I am wont to think 'that for all practical purposes and intents', this particular provision of law — in our case, paragraph (b) of section 417(1) of our CPC — 'has fallen into desuetude and obsolescence for transfer of cases to the High Court'.

[45] The argument that any particular case would involve questions of law of unusual difficulty and that therefore it should be more properly heard at the High Court can now clearly no longer without more be sustained because it is anchored on the flawed premise that the sessions court judges lack the judicial competency to deal with these questions. The case must be an extraordinary one to justify a transfer under s 417(1)(b).

[46] It is not denied that the applicant has highlighted the reasons why it considers that a transfer is warranted. But it is in my view still very difficult to accept that mere facts of the case, however intricate or complex, if indeed any would arise in the course of trial, and notwithstanding the voluminous documents that could be tendered, could not be competently and professionally dealt with by the sessions court judges, considering their legal qualifications and considerable experience.

A **[47]** It bears repetition that voluminous documents expected to be tendered by the prosecution in the two cases against the respondent or in any case for that matter cannot be used as a convenient yardstick in determining the involvement of any questions of law of unusual difficulty, what more if the concern is complexity in the facts of the cases.

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[48] Furthermore there is not even any suggestion that the sessions court judge who would be trying the case was in any manner lacking in any of these or other judicial qualities. In the absence of any indication shown to the contrary, there is no question of incompetency or incapability or any form of C unsuitability on the part of the sessions court judge to hear and deal with any of such issues that may arise in the case against the respondents.

[49] Complexity of the interplay of the law and facts however monumental D and challenging cannot be a basis to doubt the professional competency of a sessions court judge who is expected to deal with precisely any difficulty with the law in its application to the complexity of the facts of the case. After all the law places the kind of cases including these two cases to be adjudicated before the sessions court in the first place. This cannot be easily displaced.

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[50] I must therefore reiterate that the position in law is now that in order to be able to succeed under s 417(1)(b) of the CPC, an applicant must show that the question of law is truly and exceptionally difficult. It must be extraordinary. This case before me however concerns charges under s 16 of the MACC Act F and s 4(1) of the AMLATFPUAA but charges under these provisions are regularly tried at the sessions courts not just in Kuala Lumpur but also in other parts of the country.

G **[51]** Any argument about a possible challenge by the respondents, as raised by counsel for the respondents in their written submissions on the constitutionality of s 41A of the MACC Act and s 71 of the AMLATFPUAA would be pre-mature since the trial of the case has yet to commence. More importantly, it is also hypothetical since if made, it is going to be raised on the H assumption that in adducing documentary evidence, the prosecution would dispense with the calling of the maker of the documents and production of the original documents.

I **[52]** And in any event, there is nothing to prevent the respondents from raising such challenge, even if the trial of the case against the respondents herein be heard at the sessions court, which may thereafter deal with such challenge accordingly.

[53] I reiterate that the sessions court judges are no less competent and in this case is also very experienced to try the case against the applicant, and to deal with other possibly complex issues concerning admissibility of evidence and other issues potentially arising from the MACC Act, AMLATFPUAA, Evidence Act 1950 and even the Federal Constitution.

[54] Furthermore, the likelihood of reference to the provisions of such other laws does not by itself negate the competence of the sessions court in dealing with the issues which may arise during trial. And such potentiality can always surface in many other cases and that does not necessarily become a justification for a transfer.

[55] As such, I cannot but find that the ground in s 417(1)(e) of the CPC vis a vis the potential complexity of the facts of the cases as relied on by the applicant in its two applications to make a case for the transfer of the prosecution against the two respondents to the High Court cannot be sustained.

Fair and speedy trial at the High Court

[56] It is difficult to truly appreciate the argument that the complexity of the criminal charges against the respondents would make it expedient that the cases be heard at the High Court in order to ensure a fair and speedy trial process. This is no different from the preceding contention about the complexity of the facts of the cases. But there is the additional assertion that having the trial conducted at the High Court would ensure a fair and speedy process.

[57] However the applicant did not expand on this contention to fully explain how a trial process at the High Court would be any different from that at the sessions court. There is nothing in this argument of the applicant.

Not prejudicial and right of appeal to Federal Court

[58] Next, the applicant submits that the transfer of the cases to start at the High Court would not be prejudicial to either the applicant or the respondents and that both would be accorded with the right to appeal all the way to the Federal Court. As I understand it, the applicant takes the position that having the cases commenced at the level of the High Court would permit any appeals to be exhausted at the apex court of the country, which would pronounce on any crucial legal questions with final and ultimate authority, more so since, as I mentioned earlier, as argued by the respondents who are in support of the applications, there could potentially be a challenge on the constitutionality of

s 41A of the MACC Act and s 71 of the AMLATFPUAA concerning admissibility of documents.

[59] I would agree that a transfer, if allowed, would not be prejudicial to the parties. But that is precisely the point. For it has not been shown how a trial at the sessions court — where the cases have been registered for trial — would in the first place, not result in a fair and objective trial. The plain fact is that it is indisputable that there is no prejudice or injustice caused to the respondents (or the applicant) because there are absolutely no changes to the proceedings at all, other than merely on the basis of the venue of the trial.

[60] I therefore fail to see how the fact that the trial will be conducted at the sessions courts would cause any prejudice to the applicant or the respondents, or that the public interest would in any way be undermined.

[61] The argument that to commence the case at the sessions court would allow the matter be appealed right up to the apex court, whilst true, again belies the discriminatory nature of the assertion. Countless other criminal cases registered at the sessions court would have to contend with the Court of Appeal being the final appellate court for their cases. The prospect to have the future appeal be heard at the Federal Court is not a matter of choice of the litigants. It falls squarely on the demarcation of the jurisdictional authority of the courts at different levels.

[62] It should in my view be clearly stated that criminal cases must commence where they are registered under the law in adherence to the remit of the criminal jurisdiction of the sessions court. That should rightfully be the general rule. And s 59 of the MACC Act clearly states that offences under the MACC Act, like those in the instant applications must commence at the sessions court. As such, this contention cannot be legitimately used to support a transfer application.

[63] Transfer applications under s 417 of the CPC should be the exception, to be invoked only in truly deserving cases which in any event must be in strict compliance with the letter of the law as embodied in s 417 of the CPC.

[64] In the decision in *Measor & Anor v Public Prosecutor* [1972] 1 MLJ 195, the High Court in Singapore also explained the concept of the ends of justice in the following fashion:

> The second ground on which the application is made is based on paragraph (e) of section 177(1) which provides that whenever it is made to appear to the High Court that an order for the transfer of the case to the High Court is expedient for the ends of justice it may order the case to be so transferred. The expression 'expedient for the ends of justice' is very wide and may embrace grounds, outside the other clauses of

section 177(1), which may indicate the necessity of a transfer to secure justice and a fair trial but no other such ground has been advanced by the applicants.

It is the duty of the High Court to create and maintain confidence in the administration of justice. Special facilities for a trial or trial by a special judge or a special court is apt or at least is capable of being used to destroy that confidence and except where the supreme needs of justice require it, the ordinary course of justice is best left untouched. On the other hand no person should be allowed to undergo a trial by a district judge or magistrate of whom he has reasonable apprehension of being biased but not because the judicial officer is in his opinion incompetent or incapable of properly performing his duty.

The High Court will not hesitate to transfer a criminal case from a lower court to itself where there are good grounds for so doing. In this application, I can find no compelling ground for making the order which the applicants seek and the application is therefore dismissed.

[65] And this is precisely the point. In my view, a related and crucial aspect to the expression 'expedient for the ends of justice' found in s 417(1)(e) of the CPC is *the fundamental necessity of ensuring the integrity of the administration of criminal justice is always upheld. In the context of transfer of cases, an important facet is the promotion of judicial efficiency*.

[66] This relates to the efficient management of the scheduling of the cases registered in the courts in general. It cannot be denied that unwarranted applications for transfers interferes with the efficient trial arrangements of criminal cases.

[67] Commencement of criminal trials ought not to be delayed. The ruling by Richard Malanjum CJ, albeit in the context of the law on stay of criminal proceedings in the recent decision of the Federal Court in *Public Prosecutor v Dato' Sri Mohd Najib bin Hj Abd Razak* [2019] 4 MLJ 421; [2019] 6 CLJ 561 is especially instructive. His Lordship said thus:

[32] In summary, in considering an application for stay of criminal proceedings when commencement of the trial is imminent or continuing in the court of first instance, the determinative principles to be derived from the above cases are as follows:

(i) There is a strong public interest in the prosecution of crime and in ensuring that those charged with serious criminal offences are tried (*R v Crawley and Others* [2014] EWCA Crim 1028 at para [18]).

(ii) It is undesirable that the criminal process be interrupted or fragmented by interlocutory proceedings. *The considerations of public interest are of great weight leaning in favour of expeditious resolution of accusations of crime.*

(iii) The undesirability of fragmenting the criminal process is not confined to any particular part of the criminal process, but rather to the process as a whole. Any interference with any part of the process is antithetical to the proper and just disposition of criminal cases. *The caution about the undesirability of fragmentation of criminal process would be more pronounced where a hearing of proceedings has actually commenced.*

(iv) A stay of proceedings application will require especially compelling justification in a case qualifying for urgent judicial decision. *For instance, it is important that anyone charged with serious criminal offences be brought to trial expeditiously. Public interest would not be served by allowing the defence to request for a delay. An accused of serious criminal offences who is not guilty should have the opportunity of clearing his name without excessive delay* (*Attorney General's Reference No. 2 of 2001* [2003] UKHL 68 at [16]).

... (Emphasis added.)

[68] This is not to say that parties should not resort to transferring cases to the High Court. They have every right to make such applications. But it does not escape my attention that in some situations, the applications to transfers are made quite some time after the charges are filed in the sessions court. Sometimes the accused indicated that he needed time to consider whether or not to make the application for transfer.

[69] Other times counsel for the accused mentioned to the sessions court that he reserved the right to make such an application after the supply to the defence of the entire documents under s 51A of the CPC, even though there is nothing in the transfer provisions which sanctions such a position.

[70] The point is all this serves only to delay the commencement of the criminal trial, and the public would be none the wiser and probably form the perception that the court system breeds inefficiencies and delays, even, or especially for 'high profile' cases which are the ones usually seeking transfers to the High Court.

[71] The instant transfer applications now before me are not exactly free from this less than satisfactory state of affairs. Based on the court records, the respondents were charged in January 2019, some good ten months before the hearing of these applications, and the instant transfer applications were only filed by the prosecution on 19 September 2019, after the sessions court had fixed trial to commence on 25 September 2019, and it was only on that 25 September 2019, being the date the trial was supposed to have commenced, that the applicant informed the sessions court judge that it had filed applications for the transfer to the High Court.

[72] For a transfer application to have been filed so late in the day, more so by the prosecution who had all the evidence it considered sufficient to charge the respondents in the first place is quite baffling and difficult to countenance. Certainly a delay in the commencement of the criminal trial could ensue in such circumstances.

[73] As such, the reliance on the ground that the transfer would be expedient in the ends of justice too is difficult to sustain in this case because it is not expedient in the ends of justice if a transfer does not promote judicial efficiency and causes delay in the commencement of trials. I emphasise that it is essential that public confidence in the integrity of the criminal justice system be maintained at all times.

A joint trial of the cases justify a transfer

[74] This is a tenuous argument. Just because the two cases will be jointly tried, it does not follow that they should therefore be transferred to the High Court. In what manner would the sessions court now having control of the two cases be impaired from trying the respondents jointly? This has not been explained at all. Joint trials are the norm at trial courts at all levels.

[75] There thus is absolutely nothing in this argument. It is wholly unmeritorious.

All parties agreed to have the cases transferred

[76] The applicant finally argues that the applications ought to be allowed as the same are not contested by the respondents. However, as I have stated earlier, even though the parties may have agreed, this does not in any way bind the court which is free to decide otherwise should a proper exercise of its judicial discretion result in a contrary determination.

[77] The fact that the respondents have no objection to the transfer application does not relieve the applicant of its duty to satisfy this court that the requirements stipulated under s 417(1)(e) of the CPC have been met.

CONCLUSION

[78] In view of the foregoing, it is my judgment that the applicant has not succeeded in establishing its case to justify the transfer of the criminal charges against the respondents to the High Court under s 417(1)(e) of the CPC. These applications are accordingly dismissed.

Applications dismissed.

Reported by Nabilah Syahida Abdullah Salleh